



Paper No. 15

Walter G. Hanchuk
Morgan & Finnegan LLP
345 Park Avenue
New York, NY 10154

MAILED

APR 26 2002

Technology Center 2100

In re Application of: Jay S. Walker et al.)
Application No.: 09/443,158) **DECISION ON PETITION UNDER 37**
Filed: November 18, 1999) **C.F.R. § 1.181 TO WITHDRAW**
For: **CONDITIONAL PURCHASE OFFER**) **HOLDING OF ABANDONMENT**
MANAGEMENT SYSTEM)

This is a decision on the petition, filed February 14, 2002 pursuant to 37 CFR § 1.137, M.P.E.P. 711.03(c) and the Decision in Delgar v. Schuyler, 172 USPQ 513 to withdraw the holding of abandonment of the above-identified application; and the Supplemental Petition Statement, filed April 24, 2002.

The communication is treated as a petition under 37 C.F.R. § 1.181 requesting the Withdrawal of the Holding of Abandonment.(See MPEP § 711.03(c)).

This application was held abandoned for failure to file a timely response to the Office action of mail date June 12, 2001. A Notice of Abandonment was mailed on January 16, 2002.

In support of the petition, Petitioner provides a copy of (1) the Notice of Abandonment, (2) pages from the firm's mailbook for the time period of June 5, 2001 through June 29, 2001, (3) a computer printout of the list of user actions for the application, and (4) the Declaration of Shirley Hopkins, Docket Supervisor, for the firm.

M.P.E.P. § 711.03(c), section II states:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

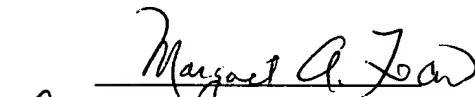
The declaration of Shirley Hopkins indicates that a review of the mailbook records, Exhibit B, show that no Office Action mailed by the United States Patent and Trademark Office (Office), on June 12, 2001, was received for application serial number 09/443,158, or firm docket number 3553-4020US1, and that

the computer printout for the application, Exhibit C, reveals that no Office Action dated June 12, 2001, was received from the Office. Furthermore, the Supplemental Petition includes a statement by the practitioner indicating that Exhibit B of the petition includes a "copy of the docketing record indicating where the non-received Office communication would have been entered had it been received and docketed".

Petitioner has met the criteria of set out in MPEP 711.03(c) for establishing failure to receive an Office action. Therefore, the petition is **GRANTED**. The abandonment is **WITHDRAWN**.

The application file is being forwarded to the Technology Center support staff. The Office action of June 12, 2001 will be remailed to the address noted above with the three month Shortened Statutory Period restarted to run from the date of the remailing.

Furthermore, petitions under 37 C.F.R. § 1.181 to Withdraw Holding of Abandonment do not require a fee. Accordingly, the amount of \$110 tendered unnecessarily will be refunded to **Deposit Account 13-4500**.



John J. Love, Group Director
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce